UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN CHAN, Plaintiff, -against- TWO FRANKS HOLDINGS, LLC and NFGTV INC. d/b/a EASTERN, Defendant.	Case No.: COMPLAINT Case No.: 16-cv-9774

Plaintiff, by her attorneys Virginia & Ambinder LLP, hereby alleges upon knowledge to herself and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought for violations of the Americans with Disabilities Act ("ADA"), the New York State Human Rights Law ("NYSHRL" or "N.Y. Exec. Law § 290 *et seq.*"), and the New York City Human Rights Law ("NYCHRL" or "Administrative Code § 8-107").

2. Defendants Two Franks Holdings, LLC and NFGTV Inc. d/b/a Eastern (collectively "Defendants") employed Plaintiff as Director of Human Resources and Facilities at Defendants 220 12th Avenue, 3rd Floor, New York, New York 10001, location.

JURISDICTION

3. Jurisdiction of this Court is invoked pursuant to the ADA and 28 U.S.C. §§ 1331 and 1337. This court also has supplemental jurisdiction under 28 U.S.C. § 1367 for claims brought under the NYSHRL and NYCHRL.

4. The Equal Employment Opportunities Commission ("EEOC") received Plaintiff's formal charge of discrimination on May 22, 2015.

5. On March 23, 2016, the EEOC issued a determination finding reasonable cause to believe that Defendants discriminated against Plaintiff on account of her disability.

6. Plaintiff received a Notice of Right to Sue from the EEOC on September 26, 2016. A copy of the notice is annexed hereto.

7. This action is being commenced within ninety (90) days of receipt of the Notice of Right to Sue.

VENUE

8. Venue for bringing this action in the Southern District of New York under 28 U.S.C. § 1391 (b) is appropriate because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

PARTIES

9. Plaintiff Morgan Chan is an individual residing in the State of New York who was formerly employed by Defendants.

10. Upon information and belief, Defendant Two Franks Holding LLC is a business corporation incorporated under the laws of the State of New York, with its principal location at 220 12th Avenue, 3rd Floor, New York, New York 10001. Defendant Two Franks Holding LLC is primarily engaged in the media management business.

11. Upon information and belief, Defendant NFGTV d/b/a Eastern is a business corporation incorporated under the laws of the State of New York, with its principal location at 220 12th Avenue, 3rd Floor, New York, New York 10001. Defendant NGFTV is primarily engaged in the media production business.

12. Upon information and belief, Defendants have employed more than 100 employees during all relevant times.

13. Defendants Two Franks Holdings LLC and NFGTV d/b/a Easter operate as joint employers and are inextricably linked.

14. Defendants' operations are interrelated and unified.

15. Defendants Two Franks Holdings LLC and NFGTV d/b/a Eastern are registered with the same address with the New York State Department of State where they conduct business and where their principle offices are located.

16. Upon information and belief, during all relevant times Two Franks Holdings LLC and NFGTV d/b/a Eastern shared common management, corporate officers and were centrally controlled and/or owned by Defendants.

17. Upon information and belief, at all relevant times, Defendants had the power to determine employee policies at both Two Franks Holdings LLC and NFGTV/Eastern, including, but not limited to, hiring and firing personnel and otherwise controlling the terms and conditions of their employment.

18. Plaintiff was employed as the Director of Human Resources and Facilities for both Two Franks Holdings, LLC and NFGTV d/b/a Eastern.

19. Plaintiff's supervisor, Mala Chapple, was the Chief of Operations of both Two Franks Holdings LLC and NFGTV d/b/a Eastern and had the power to fire Plaintiff.

20. Plaintiff and Mala Chapple conducted business through email addresses registered with @eastern.tv, and Mala Chapple is identified as the COO/EVP of Production on Eastern's company website.

21. Defendants are part of a single integrated enterprise that jointly employed Plaintiff at all relevant times.

22. Upon information and belief, Defendants had direct control over the working conditions of the Plaintiff.

STATEMENT OF FACTS

23. On or around October 31, 2014, Plaintiff was hired by Defendants as a Director of Human Resources and Facilities.

24. Plaintiff worked out of Defendants' New York office, located at 220 12th Avenue, 3rd Floor, New York, New York 10001, which is located on the third floor of a walk-up building.

25. Plaintiff's employment duties included organizing employee schedules, purchasing and inventory of office supplies, communicating with Defendants' third-party payroll administrator, monitoring employees' paid time off, and other human resource functions.

26. Plaintiff was also tasked with remotely supervising Defendants' satellite offices located in Georgia and California.

27. Plaintiff's annual salary was $65,000.00, with a contemplated three year pay structure in which Plaintiff would receive an annual salary of $65,000.00 during her first year of employment, $68,500.00 during her second year of employment, and $70,000.00 during her third year of employment.

28. On or around February 5, 2015, Plaintiff was diagnosed with pulmonary arterial hypertension ("PAH"). PAH is a progressive disease without a cure that causes narrowing and increased pressure within the blood vessels in Plaintiff's lungs.

29. Plaintiff's medical symptoms include shortness of breath, dyspnea on exertion, chest pain, and syncope.

30. Plaintiff's medical restrictions included commuting, lifting, and walking inclines (including stairs). Specifically, Plaintiff was unable to walk up the three flights of stairs to her office.

31. Shortly after learning of her condition, Plaintiff informed her immediate supervisor, Chief Operating Officer Mala Chapple, that her doctors instructed her not to commute to work until her condition was fully evaluated.

32. On February 11, 2015, Plaintiff made a request in writing to Ms. Chapple, for a reasonable accommodation to work from home until she was medically cleared to resume commuting to work and walking up the three flights of stairs to her office.

33. Ms. Chapple denied Plaintiff's request for a reasonable accommodation to work from home.

34. Thereafter, on or around February 12, 2015, Plaintiff applied and was approved for short term disability leave.

35. Defendants' professional employer organization ("PEO"), the Ambrose Employer Group LLC, informed Plaintiff that she had until May 14, 2015 to return to work.

36. Throughout her short-term disability leave, Plaintiff remained in contact with Ms. Chapple and other of Defendants' personnel, continually updating them on the progress of her surgeries and medical tests and assuring them that she would return to work shortly.

37. For example, on March 17, 2015, Plaintiff informed Ms. Chapple that she had undergone two more procedures and was currently in recovery. Plaintiff further explained that she would need to go through a series of stress tests to determine her physical limits, and would then be able to return to work.

38. On March 17, 2015, Plaintiff's physician informed Defendants, in writing, that Plaintiff had begun targeted medication and should be allowed to work from home until her follow up appointment on April 3, 2015 to ensure her safety and well-being.

39. On April 14, 2015, one month before Plaintiff's anticipated May 14, 2015 return date, Plaintiff received a notice of termination in an email from Ms. Chapple.

40. Ms. Chappel claimed that Defendants were "no longer able to hold [Plaintiff's] position open as we really need someone in that role." However, Plaintiff's position was not immediately filled by Defendants after Plaintiff's termination.

41. As a result of her termination, Plaintiff lost her salary, her health benefits and was forced to enroll in and pay for COBRA from approximately April 15, 2016 and continuing through the present.

42. On May 12, 2015, Plaintiff was medically cleared to return to work.

43. In August 2015, approximately 16 weeks after her termination, Plaintiff obtained a part-time job with an annual salary of $50,000.00, far less than the salary she earned with Defendants.

44. On May 22, 2015, the EEOC received Plaintiff's Charge of Discrimination.

45. On March 23, 2016, the EEOC issued a determination that there was reasonable cause to believe that Defendants discriminated against Plaintiff on account of her disability.

46. The EEOC's determination found that Plaintiff's disability made it impossible for her to arrive to work each day, but that Plaintiff was capable of carrying out all of her essential job duties from her home.

47. The EEOC further determined that it is unlikely that allowing Plaintiff to work from home for a period of no more than three months would have caused an undue hardship to Defendants.

48. On September 26, 2016, Plaintiff received a Notice of Right to Sue from the EEOC. [*See* Exhibit A].

FIRST CAUSE OF ACTION:
AMERICANS WITH DISABILITIES ACT ("ADA")
(Discrimination Based on Disability and Failure to Provide Reasonable Accommodations in Violation of the ADA)

49. Plaintiff repeats and re-alleges the allegations set forth above.

50. At all relevant times, Plaintiff was an "employee" and Defendants were "employers" within the meaning of the ADA pursuant to 42 U.S.C. § 12111(4) and (5).

51. Under the ADA, it is unlawful to discriminate against a qualified individual on the basis of disability with regards to hiring, advancement, discharge, compensation, opportunity, conditions and privileges of employment. 42 U.S.C. § 12112(a).

52. Further, it is unlawful for an employer to "not mak[e] reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A).

53. Plaintiff requested reasonable accommodations from Defendants' management, including but not limited to medical leave and working from home.

54. Plaintiff's request for reasonable accommodations was denied.

55. Plaintiff's request to temporarily work from home could have been easily accommodated.

56. Defendants would not have suffered any undue hardship by providing Plaintiff with the reasonable accommodations she requested.

57. Plaintiff was terminated prior to the expiration of her short term disability.

58. Defendants engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of disability and failing to provide Plaintiff with an accommodation for her disability.

59. Defendants' actions constitute violations of the ADA.

60. By the foregoing reasons, Defendants are liable to Plaintiff in an amount to be determined at trial, including but not limited to compensatory damages, back pay, front pay, punitive damages, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION:
NEW YORK STATE HUMAN RIGHTS LAW ("NYSHRL")
(Discrimination Based on Disability and Failure to Provide Reasonable Accommodations in Violation of the NYSHRL)

61. Plaintiff repeats and re-alleges the allegations set forth above.

62. Pursuant to the NYSHRL, it is unlawful "[f]or an employer, because of an individual's … disability … to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment." NYSHRL § 296(1)(a).

63. Further, it is "unlawful discriminatory practice for an employer … to refuse to provide reasonable accommodations to the known disabilities … of an employee … in connection with a job" unless it "can be demonstrated to impose an undue hardship on the operation of an employer's … business, program or enterprise." NYSHRL § 296(3)(a) and (b).

64. Defendants had actual or constructive notice of Plaintiff's disability.

65. Defendants engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of disability and failing to provide Plaintiff with an accommodation for her disability.

66. Defendants' actions constitute violations of the New York State Human Rights Law.

67. By the foregoing reasons, Defendants' is liable to Plaintiff in an amount to be determined at trial, including but not limited to compensatory damages, back pay, front pay, and interest.

THIRD CAUSE OF ACTION:
NEW YORK CITY HUMAN RIGHTS LAW ("NYCHRL")
(Discrimination Based on Disability and Failure to Provide Reasonable Accommodations in Violation of the NYCHRL)

68. Plaintiff repeats and re-alleges the allegations set forth above.

69. Pursuant to the NYCHRL, it is unlawful "[f]or an employer, because of the actual or perceived … disability … of any person … to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment." NYC Admin. Code. § 8-107(1)(a) and § 8-107(1)(a)(2).

70. Further, pursuant to the NYCHRL § 8-107(15)(a), Defendants "shall make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job…provided that the disability is known or should have been known by the covered entity."

71. Defendants had actual or constructive notice of Plaintiff's disability.

72. Defendants engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of disability and failing to provide Plaintiff with an accommodation for her disability.

73. Defendants' actions constitute violations of the New York City Human Rights Law.

74. By the foregoing reasons, Defendants are liable to Plaintiff in an amount to be determined at trial, including but not limited to compensatory damages, back pay, front pay, punitive damages, interest, and attorneys' fees and costs.

WHEREFORE, Plaintiff demands judgment:

(1) on her first cause of action against Defendants in an amount to be determined at trial, plus liquidated damages, attorneys' fees and costs;

(2) on her second cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages, attorneys' fees and costs;

(3) on her third cause of action against Defendants in an amount to be determined at trial, plus liquidated damages, attorneys' fees and costs;

(4) such other and further relief the Court deems just and proper.

Dated: New York, New York
December 19, 2016

VIRGINIA & AMBINDER, LLP

By: /s/ Lloyd R. Ambinder, Esq.

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Attorneys for Plaintiff

EXHIBIT A

EEOC Form 161-A (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: Morgan Chan
6206 Fifth Avenue
Brooklyn, NY 11220

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
520-2015-02222	Jessica A. Erdman, Investigator	(212) 336-3749

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)

[signature]
Kevin J. Berry,
District Director

09/21/16
(Date Mailed)

cc: Mala Chapple
Chief Operating Officer
TWO FRANKS HOLDING L L C
220 12th Avenue, 3rd Floor
New York, NY 10001

Michele Moreno
VIRGINIA & AMBINDER, LLP
40 Broad St, 7th Floor
New York, NY

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

"Actual" disability or a "record of" a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either "actual" or "record of" a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **"major life activities" now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of "mitigating measures"** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **"episodic"** (e.g., epilepsy, depression, multiple sclerosis) or **"in remission"** (e.g., cancer) is a disability if it **would be substantially limiting when active.**
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months.**

"Regarded as" coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- "Regarded as" coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a "regarded as" claim only when the impairment at issue is objectively *BOTH* transitory (lasting or expected to last six months or less) *AND* minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the "regarded as" definition of "disability."

Note: Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.